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DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 686

[DOL Docket No. ETA-2019-0006]

RIN 1205-AB96

Procurement Roles and Responsibilities for Job Corps Contracts

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Labor (Department) proposes two procedural changes to its Workforce Innovation and Opportunity Act (WIOA) Job Corps regulations to enable the Secretary to delegate procurement authority as it relates to the development and issuance of requests for proposals for the operation of Job Corps centers, outreach and admissions, career transitional services, and other operational support services. The Department proposes to take this procedural action to align regulatory provisions with the relevant WIOA statutory language and to provide greater flexibility for internal operations and management of the Job Corps program.

DATES: Comments to this proposal and other information must be submitted (transmitted, postmarked, or delivered) by [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]. All submissions must bear a postmark or provide other evidence of the submission date.

ADDRESSES: You may submit comments, identified by Regulatory Information Number (RIN) 1205-AB96, by one of the following methods:

Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the website instructions for submitting comments.

Mail and hand delivery/courier: Written comments, disk, and CD-ROM submissions may be mailed to Heidi Casta, Deputy Administrator, Office of Policy Development and Research, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-5641, Washington, D.C. 20210.

Instructions: Label all submissions with “RIN 1205-AB96.”

Please submit your comments by only one method. Please be advised that the Department will post all comments received that relate to this NPRM on <http://www.regulations.gov> without making any change to the comments or redacting any information. The <http://www.regulations.gov> website is the Federal e-rulemaking portal, and all comments posted there are available and accessible to the public. Therefore, the Department recommends that commenters remove personal information such as Social Security Numbers, personal addresses, telephone numbers, and e-mail addresses included in their comments, as such information may become easily available to the public via the <http://www.regulations.gov> website. It is the responsibility of the commenter to safeguard personal information.

Also, please note that, due to security concerns, postal mail delivery in Washington, D.C. may be delayed. Therefore, the Department encourages the public to submit comments on <http://www.regulations.gov>.

Docket: All comments on this proposed rule will be available on the <http://www.regulations.gov> website, and can be found using RIN 1205-AB96. The Department also will make all the comments it receives available for public inspection by

appointment during normal business hours at the above address. If you need assistance to review the comments, the Department will provide appropriate aids, such as readers or print magnifiers. The Department will make copies of this proposed rule available, upon request, in large print and electronic file on computer disk. To schedule an appointment to review the comments and/or obtain the proposed rule in an alternative format, contact the Office of Policy Development and Research at (202) 693-3700 (this is not a toll-free number). You may also contact this office at the address listed below.

FOR FURTHER INFORMATION CONTACT: Heidi Casta, Deputy Administrator, Office of Policy Development and Research, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-5641, Washington, D.C. 20210; telephone (202) 693-3700 (this is not a toll-free number).

Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

The Department is proposing to amend two provisions of 20 CFR part 686, which implements subtitle C of title I of WIOA. Through these amendments, the Department proposes to align these regulatory provisions with the language in WIOA by broadening the authority to issue contract solicitations from the Employment and Training Administration (ETA) to the Secretary of Labor. The Department proposes to make this procedural change to the WIOA regulation to provide greater flexibility in the management and operation of the Job Corps program by allowing the Secretary of Labor

to designate the component of the Department that is authorized to issue requests for proposals (RFPs) for the operation of Job Corps centers, outreach and admissions, career transitional services, and other operational support services. This change will provide the Department with the flexibility to more efficiently manage the Job Corps procurement process, which will in turn allow greater economies of scale and operational efficiencies. This proposed rule is consistent with the President's Management Agenda with respect to Cross-Agency Priority (CAP) Goal Number 5 – Sharing Quality Services. The Department is implementing this CAP goal in part, via the Department's Enterprise-Wide Shared Services Initiatives whose primary goals are as follows:

1. Improve human resources efficiency, effectiveness, and accountability;
2. Provide modern technology solutions that empower the DOL mission and serve the American public through collaboration and innovation;
3. Maximize DOL's federal buying power through effective procurement management; and
4. Safeguard fiscal integrity, and promote the effective and efficient use of resources.

This proposal will assist the Department's implementation of its Enterprise-Wide Shared Services Initiative.

This proposed rule is not an Executive Order 13771 regulatory action because this proposed rule is not significant under Executive Order 12866.

II. Consideration of Comments

ETA requests comment on all issues related to this proposed rule. As discussed more fully below, this proposed rule is the companion document to a direct final rule

(DFR) published in the “Rules” section of this issue of the **Federal Register**. If ETA receives no significant adverse comment on the proposal or DFR, ETA will publish a **Federal Register** document confirming the effective date of the DFR and withdrawing this companion NPRM. Such confirmation may include minor stylistic or technical changes to the DFR. For the purpose of judicial review, ETA views the date of confirmation of the effective date of the DFR as the date of promulgation. If, however, ETA receives a significant adverse comment on the DFR or proposal, the Agency will publish a timely withdrawal of the DFR and proceed with the proposed rule, which addresses the same revisions to procurement authority for the Job Corps program in the development and issuance of requests for proposals for the operation of Job Corps centers, and for outreach and admissions, career transitional services, and other operational support services.

III. Direct Final Rulemaking

As noted above, in addition to publishing this NPRM, ETA is concurrently publishing a companion DFR in the **Federal Register**. In direct final rulemaking, an agency publishes a DFR in the **Federal Register**, with a statement that the rule will go into effect unless the agency receives significant adverse comment within a specified period. The agency may publish an identical concurrent NPRM. If the agency receives no significant adverse comment in response to the DFR, the rule goes into effect. ETA plans to confirm the effective date of a DFR through a separate **Federal Register** document. If the agency receives a significant adverse comment, the agency will withdraw the DFR and treat such comment as a response to the NPRM. An agency typically uses direct final rulemaking when an agency anticipates that a rule will not be controversial.

For purposes of the DFR, a significant adverse comment is one that explains why the amendments to the regulatory provisions identified below would be inappropriate. In determining whether a comment necessitates withdrawal of the DFR, ETA will consider whether the comment raises an issue serious enough to warrant a substantive response. ETA will not consider a comment recommending an additional amendment to this regulation to be a significant adverse comment unless the comment states why the DFR would be ineffective without the addition.

The comment period for this NPRM runs concurrently with that of the DFR. ETA will treat comments received on the NPRM as comments also regarding the companion DFR. Similarly, ETA will consider comments submitted to the companion DFR as comment to the NPRM. Therefore, if ETA receives a significant adverse comment on either the DFR or this NPRM, it will withdraw the companion DFR and proceed with the NPRM. In the event ETA withdraws the DFR because of significant adverse comment, ETA will consider all timely comments received in response to the DFR when it continues with the NPRM. After carefully considering all comments to the DFR and the NPRM, ETA will decide whether to publish a new final rule.

ETA determined that the subject of this rulemaking is suitable for direct final rulemaking. This proposed amendment is procedural in nature and does not impact the operation of Job Corps centers, the operational support services, or the delivery of career transitional services and other operation, the process by which offerors respond to solicitations, the substance of their responses, or the criteria upon which the solicitation will be evaluated. Finally, the revisions would not impose any new costs or burdens. For

these reasons, ETA does not anticipate objections from the public to this rulemaking action.

IV. Discussion of Proposed Changes

Sec. 147(a) of WIOA authorizes the Secretary of Labor to enter into agreements with eligible entities to operate Job Corps centers and to provide activities to a Job Corps center. Two provisions in the regulation implementing subtitle C of Title I of WIOA implement section 147(a). 20 CFR 686.310(a) broadly states that the Secretary selects eligible entities to operate contract centers on a competitive basis in accordance with applicable statutes and regulations and 20 CFR 686.340(a) states that the Secretary selects eligible entities to provide outreach and admission, career transition, and operational support services on a competitive basis in accordance with applicable statutes and regulations. However, both provisions also specifically require ETA to develop and issue RFPs for these Job Corps contracts. These provisions are narrower than section 147(a) and constrain the Department's authority to assign the authority to develop and issue RFPs to whichever component of the agency it determines appropriate.

This proposed rule amends §§ 686.310(a) and 686.340(a) by replacing "ETA" with "the Secretary." Through this proposed rule, the Department is aligning the text of sections 686.310(a) and 686.340(a) with the statutory language in section 147(a) of WIOA and eliminating the inconsistency between the regulation and the statute. This change also affords the Department greater flexibility to manage and oversee the Job Corps procurement process in a manner that it determines appropriate, which in turn will aid in the implementation of the Department's Enterprise-Wide Shared Services Initiative described above.

V. Rulemaking Analyses and Notices

Executive Orders 12866 (Regulatory Planning and Review), 13563 (Improving Regulation and Regulatory Review), and 13771 (Reducing Regulation and Controlling Regulatory Costs)

Executive Order 12866 requires that regulatory agencies assess both the costs and benefits of significant regulatory actions. Under the Executive Order, a “significant regulatory action” is one meeting any of a number of specified conditions, including the following: Having an annual effect on the economy of \$100 million or more; creating a serious inconsistency or interfering with an action of another agency; materially altering the budgetary impact of entitlements or the rights of entitlement recipients, or raising novel legal or policy issues. The Department has determined that this proposed rulemaking is not a “significant” regulatory action and a cost-benefit and economic analysis is not required. This regulation merely makes a procedural change to allow flexibility to manage and oversee the Job Corps procurement process in a manner that the Department determines appropriate. This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

Executive Order 13563 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility to minimize burden.

This rule makes only a procedural change to allow flexibility to manage and oversee the Job Corps procurement process in a manner that the Department determines appropriate; thus this rule is not expected to have any regulatory impacts.

Regulatory Flexibility Act/Small Business Regulatory Enforcement Fairness Act

The Regulatory Flexibility Act (RFA), at 5 U.S.C. 603(a), requires agencies to prepare and make available for public comment an initial regulatory flexibility analysis, which describes the impact of the proposed rule on small entities. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities. This proposed rule does not affect small entities as defined in the RFA. Therefore, the proposed rule will not have a significant economic impact on a substantial number of these small entities. Therefore, the Department certifies that the proposed rule will not have a significant economic impacts on a substantial number of small entities.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the Department consider the impact of paperwork and other information collection burdens imposed on the public. The Department has determined that this rule does not alter any information collection burdens.

Executive Order 13132 (Federalism)

Section 6 of E.O. 13132 requires Federal agencies to consult with State entities when a regulation or policy may have a substantial direct effect on the States, the relationship between the National Government and the States, or the distribution of

power and responsibilities among the various levels of government, within the meaning of the E.O. Section 3(b) of the E.O. further provides that Federal agencies must implement regulations that have a substantial direct effect only if statutory authority permits the regulation and it is of national significance.

This proposed rule does not have a substantial direct effect on the States, the relationship between the National Government and the States, or the distribution of power and responsibilities among the various levels of Government, within the meaning of the E.O. This proposed rule merely makes a procedural change for internal Departmental operations and management for Job Corps procurement.

Unfunded Mandates Reform Act of 1995

This regulatory action has been reviewed in accordance with the Unfunded Mandates Reform Act of 1995 (the Reform Act). Under the Reform Act, a Federal agency must determine whether a regulation proposes a Federal mandate that would result in the increased expenditures by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any single year. This proposed rule merely makes an administrative change to the name of the Departmental entity authorized for Job Corps procurement responsibilities. The requirements of Title II of the Act, therefore, do not apply, and the Department has not prepared a statement under the Act.

Executive Order 13175 (Indian Tribal Governments)

The Department has reviewed the NPRM under the terms of EO 13175 and DOL's Tribal Consultation Policy, and have concluded that the changes to regulatory text which are the focus of the NPRM would not have tribal implications, as these changes do not have substantial direct effects on one or more Indian tribes, the relationship between the

Federal government and Indian tribes, nor the distribution of power and responsibilities between the Federal government and Indian tribes. Therefore, no consultations with tribal governments, officials, or other tribal institutions were necessary.

List of Subjects in 20 CFR Part 686

Employment, Grant programs-labor, Job Corps.

For the reasons stated in the preamble, the Department proposes to amend 20 CFR part 686 as follows:

PART 686 —THE JOBS CORPS UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT

1. The authority citation for part 686 continues to read as follows:

AUTHORITY: Secs. 142, 144, 146, 147, 159, 189, 503, Pub. L. 113-128, 128 Stat. 1425 (Jul. 22, 2014).

2. Amend § 686.310 by revising paragraph (a) to read as follows:

§ 686.310 How are entities selected to receive funding to operate centers?

(a) The Secretary selects eligible entities to operate contract centers on a competitive basis in accordance with applicable statutes and regulations. In selecting an entity, the Secretary issues requests for proposals (RFPs) for the operation of all contract centers according to the Federal Acquisition Regulation (48 CFR chapter 1) and Department of Labor Acquisition Regulation (48 CFR chapter 29). The Secretary develops RFPs for center operators in consultation with the Governor, the center workforce council (if

established), and the Local WDB for the workforce development area in which the center is located.

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3. Amend § 686.340 by revising paragraph (a) to read as follows:

§ 686.340 How are entities selected to receive funding to provide outreach and admission, career transition and other operations support services?

(a) The Secretary selects eligible entities to provide outreach and admission, career transition, and operational services on a competitive basis in accordance with applicable statutes and regulations. In selecting an entity, the Secretary issues requests for proposals (RFP) for operational support services according to the Federal Acquisition Regulation (48 CFR chapter 1) and Department of Labor Acquisition Regulation (48 CFR chapter 29). The Secretary develops RFPs for operational support services in consultation with the Governor, the center workforce council (if established), and the Local WDB for the workforce development area in which the center is located.

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John P. Pallasch,
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